

**Immigration and Nationality Law:
Problems and Strategies
(Carolina Academic Press 2020)**

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Summary of the 2024 Cumulative Textbook Supplement.

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Picture of Authors attending the National AILA conference in 2022. Stephen Yale-Loehr is retiring in 2024. Shoba Sivaprasad Wadhia is currently on leave working the Civil Rights Division of DHS. Lenni Benson prepared this supplement.

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Chapter 1: Immigration Law: Introductions, Foundations of Constitutional Power, and Immigration Federalism

What's New in this Chapter:

One of the goals of the chapter is to introduce the field of immigration law and how it intersects with many other areas of law. The chapter also provides some demographic and statistical context for some of the legal and policy issues. Accordingly, many of these updates are to provide the reader with currently available data.

The chapter also addresses the tools Congress has identified to manage irregular migration: criminal penalties, civil penalties, and employer sanctions. In the past fifteen years, State and local governments have increasingly passed legislation or adopted policies that interact with the federal laws.

The Form I-9 and E-verify programs are also updated, and links to new USCIS requirements are provided below.

In June of 2023, the Supreme Court addressed a First Amendment facial challenge to the Constitutionality of the criminal “harboring” statute. We have added the text of that statute to our brief section on the use of criminal penalties and provided an excerpt from the opinion. *United States v. Hansen*, 599 U.S.762 (2023).

This trend of considering both federal and criminal sanctions to deter or control immigration are explored throughout the chapter. New updates on State attempts to enter immigration controls are provided.

This text does not gather all constitutional challenges into a single chapter but discussion is spread throughout the chapters related to the focus of the chapter, e.g., family and marriage in chapter 4, due process in removal in Chapter 6, etc.

Chapter 2: Immigration Power at the Borders: Finding the Dividing Lines

This chapter focuses on the power of the federal government to control the admissions of noncitizens at the border or within the interior after irregular entry. Since 2019 when the book was published, this has been an area of rapid change. We provide some history but include graphs, flow charts and step-by-step descriptions of inspection and border process.

The first major shift was created by the Trump Administration and entitled the “Migrant Protection Protocols.” This is a misnomer. The thrust of the program was to force people to “remain in Mexico” and to wait for streamlined hearings. The program was formally repealed by the Biden administration and the chapter will only contain brief references to the program.

The second major change was created by the pandemic. The Center for Disease Control and DHS used their authority under Title 42 which concerns public health to exclude people from the

United States *outside* of the INA provisions. The Biden administration lifted these controls for the SW border on May 12, 2023.

Then in May of 2023 and again in June of 2024, the Biden administration announced both regulatory changes and enforcement procedures that to many looked a new type of “asylum ban.” This supplement will try to give a current picture, as of early August 2024, of the procedures being implemented at the SW border and beyond. Are we back to forcing people to wait in Mexico?

Highlights of this chapter include:

- Supreme Court rejection of State Challenges to the border protocols and updates on litigation over the building of a border wall using funds from other federal programs.
- Supreme Court narrowing of the Due Process rights of people in expedited removal proceedings under INA § 235(b); 8 U.S.C. § 1255(b) and an excerpt from the important case *Department of Homeland Security v. Thuraissigiam* (2020).
- Biden administration repeal of the territorial expansion of expedited removal discussed in the text at 167 to 181 and graphs that depict the expansion and now contraction of expedited removal.
- Revision to the asylum procedures, including graphs that explain the new steps in adjudication for some individuals and a discussion of the litigation that followed.
- New Problem 3-2-3 is to be analyzed under the May 2023 rules.
- The Introduction of a telephone-based app, CBP One™, used to meter or control applications for admission and asylum at the border.
- Updates to data about apprehensions and removals from the borders.
- Expansion of the use of “parole” to admit people into the United States. The topic is introduced here and address again in the supplement to Chapter 3 which concerns the regular process of admission to the United States via visas, statutory waivers, or special provisions.

Chapter 3: Nonimmigrant Visas and Maintaining Status in the United States

Visa Issuance and Annual Data updated to provide context on the use and reliance on nonimmigrant visas. This data helps you understand patterns in employment and other temporary admissions in the nonimmigrant visa categories.

Parole in its many forms is discussed and how it may be used by people seeking protection but also for business entrepreneurs. Further, the limits of parole status are mentioned. Parole in Place is covered in Chapter 4 relating to eligibility for adjustment of status.

Update for Foreign Student admissions and expansion of categories of work authorization post-graduation for some in science fields.

Update on problems with H-1B lottery selection for the capped H-1B initial petitions. In FY 2023 there were serious allegations of petition fraud. In FY 2024, the USCIS altered the registration process. H-4 Spouses and ability to work is now available in some situations.

Update on presumptions of visa misrepresentation or fraud (INA § 212(a)(6)(C) for behavior that contradicts admission category within 90 days of entry.

Humanitarian temporary admissions:

Update on alternatives to a visa to seek admission or temporary status in the United States

Including Temporary Protected Status (TPS; a reminder about the special new parole admissions by nationality and programs discussed in the beginning of this chapter update.

Updates on “U” process expanding certification for labor abuses.

Brief note on Supreme Court interpretation of “admission” as not including a grant of Temporary Protected Status at the end of this chapter.

Chapter 4: Immigrants and Paths to Permanent Resident Status

New graphs and charts to help visualize the categories of people qualifying for immigrant admission.

Discussion of the Dept of State 2023 Yearbook of Immigration Statistics, Waitlists, and Special Immigrant Status for Afghan people who worked for the U.S. government.

Updated *Visa Bulletin* data with graphics based on FY 22 data and notes on FY 23.

Updated hypotheticals to demonstrate the problems with existing quotas and the waiting periods of immigrant visa numbers.

Discussion of Conditional Lawful Permanent Resident Spouses and data about how many marriages involve foreign nationals.

Discussion of the *Visa Bulletin* Backlogs.

Brief discussion of revocation of petitions and a pending Supreme Court case *Bouarfa v. Mayorkas*, cert granted 2024.

Expanded discussions of Prevailing Wage Certifications & PERM Labor Market Certifications, EB-5

How adjustment of status filing rules are relaxed for people granted asylum or those admitted as refugees speeding their path to full residence

Updated DACA discussions and special new Parole in Place rules that may add 500,000 U.S. citizen spouses and stepchildren to complete adjustment of status within the borders of the United States.

A brief discussion of humanitarian parole and TPS and how those categories impact eligibility for adjustment of status to lawful permanent resident. More details about parole admissions as reported by DHS to Congress.

Chapter 5: Inadmissibility in Every Context

Update on statistics or lack thereof from the Department of State findings of inadmissibility.

Dept of State v. Muñoz, ___ U.S. ___ (2024) a 5-1-3 decision denying a U.S. citizen judicial review of a finding that her husband is inadmissible. This is a significant new case that touches on the rights of families and due process.

Revocation of the 2017 Travel Bans by President Biden that were the subject of *Trump v. Hawaii* and a class action settlement allowing some people to reapply.

Understand how marijuana use, or convictions can impact admissibility.

Update on a BIA case holding that a person is not subject to the ten-year bar under INA § 212(a)(9)(b) by waiting to apply for an immigrant visa more than ten years after a departure yet while still present in the United States.

Chapter 6: Deportability and the Removal Process

Update on statistics on grounds of removability and rates of representation.

Recent BIA case denying suppression of arrest statements after a traffic stop. *Matter of Fermin Mariscal-Hernandez*, 28 I&N Dec. 666 (BIA 2022).

Recent Supreme Court Decision Interpreting Obstruction of Justice as an Aggravated Felony. *Pugin v. Garland*, 599 U.S. 600 (2023).

Additional notes on BIA cases addressing aggravated felony allegations.

Attorney General Garland issued precedent decisions reinstating the power of Immigration Judges to use administrative closure and/or terminate proceedings. *Matter of Cruz-Valdez*, 28 I. & N. Dec. 326 (Att’y Gen. 2021) and *Matter Of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022). And how these holdings were codified in the regulations effective July of 2024.

2024 Supreme Court rulings on the adequacy of a Notice to Appear *Campos-Chaves v. Garland, Attorney General*, 602 U.S. ___, 144 S.Ct. 1637 (2024) (consolidated with *Garland v. Singh*) (rejecting reading requiring a complete Notice to Appear in one document).

2022 Supreme Court cases on bond and detention during removal. *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). Followed by a constitutional ruling that due process requires an individualized determination for pre-removal order detention by the Second Circuit Court of Appeals, *Black v. Decker*, 103 F.4th 133 (2d. Cir. 2024)

2022 and 2024 Supreme Court cases discussing access to judicial review under the INA. *Patel v. Garland*, 596 U.S. 328 (2022) (no judicial review of denied adjustment of status) and *Wilkinson v. Garland*, 601 U.S. 209 (2024).

Description of procedural changes implemented by the immigration courts.

Chapter 7: Relief from Removal

Clarification of Three Forms of Cancellation of Removal

--LPR cancellation

--10-year presence and extreme and exceptional hardship

--VAWA hardship

There is another form of cancellation for people who qualify under the Nicaraguan Adjustment and Central American Relief Act (NACARA) that is not discussed here.

Precedent decision *Matter of J-J-G* (BIA 2020) on proving extreme and exceptional hardship.

Wilkinson v. Garland, 601 U.S. 209 (2024) preserving the ability to seek judicial review of the mixed issues of law and fact presented in cancellation cases.

Ramos Da Silva v. Attorney General, 948 F.3d 629 (3d Cir. 2020) addressing VAWA cancellation eligibility and past arrests. More notes on how criminal convictions may bar applications for relief and the special limits on judicial review of the exercise of discretion under INA § 242.

Updates on the exercise of prosecutorial discretion and the litigation rejected for lack of standing brought by states seeking to stop the Biden Administration prosecutorial priorities.

Updates on available data about grants of relief.

Update on the status of Deferred Action for Childhood Arrivals (DACA).

Chapter 8: Asylum and Relief for People Seeking Refuge

As was noted in Chapter 2, since 2019 there have been repeated regulatory and policy shifts over how to address asylum seekers at the border. This chapter does not repeat the discussion of the rules in operation at the Southwest border. Please see chapter 2 supplement for more on current rules and procedures.

This supplement does provide a reminder that asylum eligibility and the burden of proof is altered due to the May 2023 **Circumvention of Legal Pathways** regulations and the interim final rule issued in June of 2024.

Two circuit court decisions are added. *Singh v. Garland* (2d Cir. 2021) (discussing the element of internal relocation) and *Rodriguez-Zuniga v. Garland* (9th Cir. 2023). This case has a lengthy discussion of proving the nexus between the persecution and a protected ground. The majority and dissent disagree about what the statutes required.

A chart comparing asylum process depending on the location of the asylum seeker and the date of entry. The new regulations will seriously impact people’s eligibility for asylum, the burden of proof and the greater imposition of regulatory bars to asylum.

We have removed a longer discussion of the EOIR Asylum Merits Interview Review Process as limited resources in the Asylum Office have made the procedure rare.

Updates since the 2019 text publication that indicates how Attorney General Garland rescinded some of the restrictive asylum interpretations of the prior administration and restored some of the arguments about gender, domestic violence, and family members as qualifying as members of a particular social group for asylum eligibility.

The critical importance of asylum seekers being able to seek a continuance in immigration court both due to prioritized dockets and the inability to find low cost or free counsel in many courts.

And we have created some charts from recent DHS asylum processing data. And from a critique written by the DHS Office of Inspector General published in July of 2024. As was noted in Chapter 2, since 2019 there have been repeated regulatory and policy shifts over how to address asylum seekers at the border. The text in this chapter has a brief history section and contains information about the Regulations adopted May 12, 2023, and litigation surrounding the Circumvention of Lawful Pathways rules.

A chart comparing asylum process depending on the location of the asylum seeker and the date of entry.

An excerpt from EOIR policy guidance about how Immigration Judges should conduct special truncated removal hearings called Asylum Merits Interview Review matters.

Updates since the 2019 text publication that indicates how Attorney General Garland rescinded some of the restrictive asylum interpretations of the prior administration and restored some of the arguments about gender, domestic violence, and family members as qualifying as members of a particular social group for asylum eligibility.

Data on grants of relief for asylum.

Chapter 9: U.S. Citizenship and Naturalization

Updates on USCIS efforts to increase Naturalizations for the 9 million qualified Lawful Permanent Residents, over 1 million naturalizations in FY 2022 and nearly 900,000 in FY 2023.

New efforts to limit “birthright Citizenship.”

How does USCIS view Admissions of the Use of Marijuana and the Naturalization requirement of “good Moral Character.”

Updates on Renunciation of Citizenship and Denaturalization

Data on the populations of lawful permanent residents who are eligible for naturalization.

Support for adopters of the text.

We currently maintain a website on Cornell’s Canvas pages with sample syllabi and teaching materials. This next year, Professor Benson will be building a new site and welcomes your questions or suggestions for materials that will support your teaching.

Special thanks to the following people who helped me with conversations, research, or edits: Steven Gomez 3L, NYLS; Rebecca Chant 3L, NYLS, Oliver Killeen 2L, NYLS, Cassidy Lang 2L, NYLS, Kuldeepsinh Solanki 3L, NYLS, Lily Wellington, Adjunct Professors: Daniel Parisi, The Honorable Dorothy Harbeck, The Honorable Amiena Kahn, and innumerable students and colleagues. Please see the text for other sincere acknowledgements of guidance and assistance. All errors remain mine.

A handwritten signature in blue ink, reading "Kevin Benson". The signature is written in a cursive style with a large initial "K" and a prominent dot over the "i".